

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-505

July 5, 2000

OXFORD COUNTY TELEPHONE SERVICE CO.
Proposed Tariff for Intrastate Telephone Service

ORDER APPROVING
RATE SCHEDULE;
TERMS AND
CONDITIONS AND FORM
SPECIAL CONTRACT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order we approve Oxford County Telephone Service Company d/b/a Oxford Networks (Oxford Networks) initial schedule of rates and terms and conditions, as well as a form contract for "Wireless Internet Protocol Services."

On May 3, 2000, in Docket No. 2000-310, we granted authority to Oxford Networks to provide resold local exchange service and resold and facilities-based dedicated services. On June 8, 2000, Oxford Networks filed its initial set of terms and conditions. The general terms and conditions of Oxford Networks are the standard terms and conditions recommended by the Commission. Included with the terms and conditions, and incorporated in them, is a form special contract (Customer Service Agreement) for Wireless IP Services. At this time, Wireless IP Service is the only proposed service offering by Oxford Networks. That service is described in the terms and conditions, but greater detail about the service, as well as the pricing, is contained in the form special contract.¹

Oxford Networks requests that we approve the form special contract pursuant to 35-A M.R.S.A. § 703(3-A). The prices in the contract are blank. Oxford is requesting us to approve in advance every specific contract with a customer that uses the form terms and conditions. It is also requesting us to approve, in advance, future prices for each customer, which are unknown at this time and may vary from customer to customer. In a supplemental filing of June 28, 2000, Oxford Networks requests that it not be required to file each contract with the Commission, but that the Commission may request Oxford to provide the Commission with any of the contracts at any time and that Oxford shall comply within 72 hours.

Advance approval of the form terms and conditions contained in the contract does not present a problem. Approval of prices, which are presently unknown and will not be the same for each customer, presents a somewhat more difficult question. Oxford Networks states that prices will be subject to negotiation and will reflect market value, the specific circumstances of the customer, and any unique factors related to the

¹Pursuant to a Protective Order issued on June 9, 2000, the description of the service in the Customer Service Agreement is a confidential trade secret information.

provision of service by the customer. Oxford Networks is a competitive local exchange carrier. We generally refrain from direct regulation of the rates of CLECs, and here the particular service is competitive. We therefore will approve in advance competitively-based pricing for future individual contracts. We remind Oxford, however, that it is a public utility and is subject to the requirement of 35-A M.R.S.A. § 702(1) that it not engage in undue or unreasonable discrimination among customers. As we have explained in previous orders that have granted utilities flexibility in their pricing under special contracts, a price difference alone does not establish unjust discrimination. A utility may negotiate prices in a competitive market, taking into account the competitive alternatives available to the customer and other customer-specific circumstances.

Oxford Networks's supplemental filing also requests that we approve in advance "any executed Customer Services Agreement that does not materially differ from the template Customer Services Agreement." That request is acceptable. Upon occasion customers bargain for materially different terms and conditions than those contained in a form contract. To the extent that a contract for an individual customer does differ materially from the form contract that we are approving in this Order, Oxford must submit that particular contract (with or without pricing) to the Commission for approval. Oxford Networks also requests that the "approval extend to any subsequent amendments to such Customer Services Agreements." We will apply the same materiality standard to that request. Amendments that are material (except for pricing that is competitively-based) must be submitted for approval.

Finally, for the Wireless IP Services, Oxford Networks requests a waiver of certain consumer protection requirements contained in Chapters 810, 860, and 870 of the Commission's rules. Certain minor deviations from those rules occur in the form contract for that service. For example, Oxford Networks may terminate for nonpayment after 10 days notice rather than 14 days required by Chapter 810. Oxford Networks alleges that the deviations are consistent with practices in a competitive market and reflect reasonable balancing of the interests of Oxford Networks and the customer. Our Consumer Assistance Division has reviewed the deviations and does not object to the waiver request. The waiver we grant is for those deviations that exist in the present approved form contract. It is not a blanket waiver for all of Chapters 810, 860 and 870. If Oxford Networks materially changes the form contract, and any of the changes include the introduction of additional deviations from any Commission rule, it must seek approval under 35-A M.R.S.A. § 703(3-A), as discussed above. Any such request should specifically identify all additional deviations from our rules.

Oxford Networks also states that the general terms and conditions (which specifically incorporate Chapters 810, 860 and 870) will apply to standard services such as local exchange service and that if it believes waivers are necessary for other services, it will seek waivers at that time.

We note that the flexibility that we are granting to Oxford by pre-approving special contracts is similar to the flexibility afforded under the alternative form of regulation (AFOR) for Bell Atlantic. The statute authorizing the Commission to establish

an AFOR for a telephone utility² specifically allows the Commission to waive the requirements and exempt a utility under an AFOR from section 703. Ironically, although the Commission regulates Oxford Networks and other CLECs more lightly than Bell Atlantic, the Commission has no authority to waive the requirement of section 703(3-A) for any telephone utility except one that is under an AFOR.³

Wherefore, we

1. APPROVE the rate schedules and terms and conditions of Oxford County Telephone Service Company, filed on June 8, 2000, and the form special contract (Customer Service Agreement) (Appendix A to Terms and Conditions Page 9) for Wireless Broadband IP Transmission Services; and,
2. ORDER Oxford County Telephone Service Company to comply with other directives contained in this Order.

Dated at Augusta, Maine, this 5th day of July, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

²In order to adopt an AFOR for a telephone utility, the Commission must hold public hearings and "other processes" and must make nine specific findings required by 35-A M.R.S.A. § 9103.

³The Commission intends to request the Legislature to address this issue.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.